

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Energy Corporation	)	
for Approval of a Transaction by which	)	
Wisconsin Energy Corporation Would Acquire	)	Docket No.: 9400-YO-100
All of the Outstanding Common Stock of	)	
Integrus Energy Group, Inc.	)	

**SUR-REBUTTAL TESTIMONY OF  
ALLEN L. LEVERETT IN SUPPORT OF APPLICATION  
BY WISCONSIN ENERGY CORPORATION**

1 Q. Please state your name, business address, and title.

2 A. My name is Allen L. Leverett. My business address is 231 West Michigan Street,  
3 Milwaukee, Wisconsin 53203. I am the President of Wisconsin Energy Corporation  
4 (“WEC”).

5 Q. Did you previously file testimony on behalf of WEC in this docket?

6 A. Yes. I filed rebuttal testimony.

7 Q. What is the purpose of your sur-rebuttal testimony in this proceeding?

8 A. My sur-rebuttal testimony responds to the positions taken in rebuttal testimony by  
9 Commission Staff, the Citizens’ Utility Board (“CUB”), the Wisconsin Industrial Energy  
10 Group (“WIEG”), Jobs4WI and Great Lakes Utilities (“GLU”). With a few exceptions,  
11 Staff and intervenors have not materially changed their positions from those they took in  
12 their direct testimony. I will be responding to new information contained in rebuttal  
13 testimony concerning:

- 14 • proposed conditions on ATC ownership and voting rights;
- 15 • “most favored nation” status for Wisconsin;

- 1 • integrated resource planning and proposed conditions related to Wisconsin
- 2 Public Service Corporation's ("WPS") proposal to add a third unit ("Fox 3")
- 3 at its Fox Energy Center;
- 4 • the various proposals that WEC write off all or a portion of its transmission
- 5 escrow balance or take other steps to deliver immediate monetary benefits to
- 6 customers as a condition of approval;
- 7 • Jobs4WI's proposed conditions that either exceed the Commission's authority
- 8 under Wisconsin law or have been rejected in recent rate cases; and
- 9 • a suggestion that the Commission treat certain costs related to the sale of the
- 10 Presque Isle Power Plant as transaction costs.

11 Q. Do you agree with Staff witness Ms. Hubert's contention that some of WEC's  
12 "concurrence with proposed conditions is so heavily clarified that it amounts to an  
13 opposition of a condition"?

14 A. No. Our intention in clarifying certain conditions offered by Staff and intervenors is  
15 consistent with the cautionary statement in Ms. Hubert's rebuttal testimony: "It is  
16 important for the Commission to clearly state its expectations and requirements to avoid  
17 future misunderstandings and misinterpretations." (Rebuttal-PSC-Hubert-2). We  
18 couldn't agree more. We feel that it is important for the Commission to understand each  
19 of the parties' positions on the various conditions, and to implement conditions that serve  
20 a purpose and can be applied in the real world. That was -- and remains -- our intention  
21 in offering clarification, where necessary, of our understanding of the various conditions  
22 being proposed in this case.

23 Q. Which of the issues raised in rebuttal would you like to address first?

1 A. I would like to talk about the various proposed conditions relating to ATC ownership and  
2 voting rights. On Ex.-WEC-Lauber-4, these proposed conditions are listed as items 19  
3 through 31 and 94.

4 Q. Please proceed.

5 A. In my rebuttal testimony, I discussed the particulars of the voting restrictions we have  
6 offered with respect to ATC (including our invitation to the Commission to formalize  
7 those restrictions in its order), the legislation that led to the formation of ATC and more  
8 recent developments that are relevant to ATC ownership and governance. The witnesses  
9 who extensively addressed ATC issues in their direct testimony, Staff witness Mr. Pilo  
10 and GLU witness Dr. Lowry, did not submit rebuttal testimony. However, GLU witness  
11 Mr. Kothari did submit rebuttal testimony that largely restates the same points he made in  
12 his direct testimony, and Staff witness Ms. Hubert's rebuttal testimony responded to  
13 some of the points I had made in my rebuttal.

14 Q. Could you describe some of the fundamental problems associated with the ATC  
15 conditions that Ms. Hubert and Mr. Kothari propose in their rebuttal testimony?

16 A. I see at least two major problems with the proposed conditions. First, by proposing that  
17 the Commission somehow order that GLU or its members be given an ATC Board seat or  
18 enhanced voting power (*e.g.*, items 23, 24 and 31), these witnesses seek authority that  
19 lacks any proportionality to GLU's cumulative ownership interest in ATC, which is  
20 1.59%. (Ex.-WEC-Lauber-13). Moreover, under Wis. Stat. § 196.485(3m)(c)3.b.,  
21 groups of non-transmission utility security owners that, as a group, owned 10% or more  
22 of ATC's voting securities were entitled -- *for the first ten years of ATC's existence* -- to

1 a Board seat. Now that the ten-year period has expired, GLU seeks to extend that  
2 entitlement in perpetuity, with no basis under the statutes.

3 Q. What is the second problem you see with the ATC-related conditions proposed by Ms.  
4 Hubert and the intervenors?

5 A. The proposals seek to fundamentally change the way in which ATC is managed. As I  
6 noted in my rebuttal testimony, Staff's and GLU's proposals to give GLU and its  
7 members outsized influence over ATC and to reserve Board seats for minority owners are  
8 completely inconsistent with the terms and conditions on which ATC was formed. The  
9 economic positions of all ATC owners are adequately protected by the company's  
10 governing documents, which the Commission approved at the time ATC was formed. In  
11 fact, Mr. Kothari seems to concede the adequacy of this protection of the economic  
12 interests of all ATC owners on page 5 of his rebuttal testimony. Further, the interests of  
13 all ATC owners are protected equally by various statutory provisions, such as the  
14 requirement that ATC have four independent directors.

15 Q. Ms. Hubert argues, though, that WEC could have these governing documents amended so  
16 that they become less protective of minority owners' rights because WEC has proposed  
17 to retain its full voting rights for "fundamental corporate matters," including amendment  
18 of ATC LLC's or ATC Management Inc.'s governing documents. Do you agree?

19 A. No. First, WEC cannot ignore the statutory provisions relating to ATC governance.  
20 Second, I respectfully submit that Ms. Hubert is ignoring an important part of the  
21 commitment WEC has already made concerning limitations on its voting authority.  
22 Specifically, as set forth in my rebuttal testimony, we committed that:

23 In no case will WEC or the combined company use its voting  
24 power in ATC LLC or ATC Management to initiate a fundamental

1 matter or otherwise seek or propose to amend the governing  
2 documents of ATC LLC or ATC Management to provide voting or  
3 consent rights with respect to a matter that does not currently  
4 require a member or shareholder vote or consent.

5 This commitment is specifically crafted to address the concern that Ms. Hubert has  
6 identified. It means that WEC cannot affirmatively use its retained voting rights with  
7 respect to fundamental corporate matters to expand its influence over ATC LLC or ATC  
8 Management. On the other hand, if other parties initiate actions to diminish WEC's  
9 influence with respect to fundamental corporate matters, WEC retains the right to use its  
10 full voting authority *defensively* to resist such efforts. To completely strip WEC of any  
11 ability to use its full voting authority defensively to protect its interest in ATC would be  
12 unfair, unreasonable and inconsistent with Wis. Stat. § 196.485.

13 Ms. Hubert is also completely wrong when she says on page 2 of her rebuttal testimony  
14 that "the future of ATC, whether it remains a standalone entity, or merges with another  
15 company; whether it remains closely held or becomes publicly traded; will be determined  
16 by one entity -- WEC Energy -- even if all of the approximately two dozen Wisconsin  
17 ATC owners do not wish to take that route." That simply isn't true. We are specifically  
18 committing not to take such actions, so Ms. Hubert's concern does not support her  
19 proposed conditions relating to ATC.

20 Mr. Kothari also claims to share Ms. Hubert's concern that WEC might sell some portion  
21 of its interest in ATC to another party, which would result in that party owning a majority  
22 share of ATC. (Rebuttal-GLU-Kothari-5). While it is likely any such transaction would  
23 require Commission approval, to remove any doubt we would be willing to accept a  
24 condition that would require Commission approval for any sale of all or part of our

1 interest in ATC that would result in a different company owning a majority interest in  
2 ATC.

3 Q. Ms. Hubert claims at page 3 of her rebuttal that Staff's proposed conditions are designed  
4 to allow "WEC Energy to retain the financial benefits that accrue from its majority  
5 ownership" in ATC. Do you agree?

6 A. No. Certain of Staff's proposed conditions actually contradict this assertion. For  
7 example, Staff has proposed both that WEC study divestiture of a portion of its interest in  
8 ATC (item 22), and that it actually divest its ownership interest in excess of 34% (item  
9 28). Moreover, Staff's proposed voting restrictions would deprive WEC of its ability to  
10 protect its ownership interest in ATC against attempts by others to diminish its value.  
11 That is why we have proposed to retain our defensive voting rights for fundamental  
12 corporate matters. Finally, I note what I believe to be an inconsistency in Staff's and  
13 GLU's testimony on this issue. While they state that they are concerned about  
14 concentration of ATC ownership, their solution is for WEC to sell some portion of its  
15 ownership to other existing ATC owners. (Direct-GLU-Kothari-6-7; Rebuttal-PSC-  
16 Hubert-5). However, if this is truly Staff's and GLU's concern, they should be  
17 indifferent as to whether ATC ownership interests are sold to existing or new ATC  
18 owners if the sale will result in a decrease in ownership concentration.

19 Q. How do you respond to Ms. Hubert's point that WEC held a majority ownership interest  
20 in ATC for less than six months after ATC was formed?

21 A. The reason I raised the fact that WEC owned more than fifty percent of ATC at one time  
22 was to address Mr. Pilo's implication that the law was somehow intended to forbid any  
23 utility from owning a majority share. The fact that WEC did own a majority interest in

1 ATC in the early stages of its development -- which Ms. Hubert concedes -- confirms the  
2 fundamental point that Wisconsin law does not bar a majority ownership in ATC.

3 Q. In his rebuttal, GLU witness Mr. Kothari echoes Ms. Hubert's concern that the ATC  
4 restrictions WEC has committed to will not suffice to prevent WEC from exerting  
5 "informal" influence to cause ATC to act in ways that are not beneficial to customers.  
6 How do you respond?

7 A. Mr. Kothari does not provide any specifics on the manner in which a majority owner  
8 could exercise such influence to the detriment of customers. There are only two  
9 conceivable ways in which ATC could act in ways that are not beneficial to customers:

- 10 • ATC could construct too much or too little in the way of new transmission assets;
- 11 or
- 12 • ATC could charge rates that are unreasonably high for transmission service.

13 Neither of these is subject to unilateral control by ATC such that hypothetical "informal"  
14 influence by WEC could make any difference. Construction of transmission assets is  
15 subject to extensive oversight by MISO and input from stakeholders and is subject to  
16 review by the Commission. Transmission projects cannot be undertaken or avoided  
17 simply based on any hypothetical "informal" influence by an owner of ATC, even a  
18 majority owner. Similarly, the rates ATC charges for transmission are regulated by  
19 FERC. No hypothetical "informal" influence can cause rates to be any higher than FERC  
20 deems reasonable.

21 Q. Staff, CUB and WIEG continue to press the idea that a "most favored nation"  
22 commitment is required to protect Wisconsin ratepayers (items 32-35). How do you  
23 respond?

1 A. I continue to believe that no such commitment is necessary. Multiple parties have  
2 proposed nearly 100 conditions in Wisconsin, so the likelihood that they've missed some  
3 material potential commitment is very low. However, if the Commission finds that a  
4 "most favored nation" condition is warranted, I will offer a compromise that addresses  
5 Staff's and the intervenors' concerns, while avoiding a standoff.

6 Q. What is that compromise?

7 A. WEC is willing to commit to making a filing within 90 days of the closing of WEC's  
8 purchase of Integrys. That filing will advise the Commission of the resolution of parallel  
9 proceedings in other jurisdictions, including any conditions included in those other  
10 commissions' orders. If, based on that filing, the Commission identifies any generally-  
11 applicable conditions from other jurisdictions that benefit ratepayers and that are  
12 applicable and practical to implement in Wisconsin, then the Commission has the  
13 authority under Wis. Stat. § 196.39 to reopen this docket to impose such conditions. It is  
14 simply not possible, as Staff and intervenors seem to suggest, for WEC to commit,  
15 without qualification, to the application in Wisconsin of each and every condition  
16 imposed or agreed to in other jurisdictions. For example, many of the proposed  
17 conditions in Illinois have to do with the Accelerated Main Replacement Program in  
18 Chicago. Clearly, since that gas infrastructure program is being implemented in Chicago,  
19 conditions relating to it are inapplicable to Wisconsin.  
20 Finally, it is critical that the Commission *not* require resolution of such issues before  
21 WEC is allowed to close the proposed transaction. Indeed, such a condition could lead to  
22 a lengthy and unnecessary delay in closing that could jeopardize the transaction.

1 Q. With respect to Fox 3 (items 47-49), several parties make the point that it is not enough to  
2 simply undertake joint resource planning. To realize the benefits of such an effort, they  
3 argue, WEC must actually implement the results of that plan. How do you respond?

4 A. Staff witness Mr. Detmer makes a valid point, which is echoed by Staff witness Mr.  
5 O'Donnell and CUB witness Mr. Hahn. Implicit in our commitment to comply with Mr.  
6 Detmer's proposal for WEC to submit a joint resource plan within 120 days of closing is  
7 a commitment to act in a way that is consistent with what such a joint plan shows, if such  
8 actions are approved by the Commission. We are amenable to having that commitment  
9 made part of the condition on this point.

10 However, it is unrealistic to expect WEC to simply commit *now* to defer or not construct  
11 Fox 3 without having had the opportunity to do its own analysis. Indeed, I would be  
12 surprised if the Commission would even be willing to impose such a condition based  
13 exclusively on Mr. Detmer's analysis and without having had any substantive input from  
14 the affected utilities. Because the inputs needed for such an analysis are competitively  
15 sensitive, WEC has not yet received access to WPS's data and will not have such access  
16 until after closing. Once WEC has access to such data, we will complete the joint  
17 resource plan as proposed by Mr. Detmer. That joint resource plan will provide a path  
18 forward.

19 Q. Doesn't your unwillingness to definitively commit at this time to deferring or avoiding  
20 Fox 3 mean, as the intervenors suggest, that you shouldn't "count" the \$600 million in  
21 savings estimated by Mr. Detmer as a benefit of the transaction?

22 A. I disagree with this assertion. Mr. Detmer has significant experience doing these  
23 analyses, and we have no reason at this time to believe that he has miscalculated.

1 Therefore, we expect that when -- as simple prudence requires -- we conduct our own  
2 independent analysis, we will come up with results similar to Mr. Detmer's, which will  
3 mean that there are very large system savings available to customers as a result of the  
4 joint resource planning opportunities made possible by the transaction -- \$600 million  
5 worth if Mr. Detmer is correct. Of course, the results of that analysis will be subject to  
6 review by the Commission.

7 Q. What is your reaction to the continued suggestions that customers must receive  
8 immediate monetary benefits -- whether in the form of bill credits (item 78), write-off of  
9 transmission escrow accounts (items 89-92), earnings caps (items 39-40), rate freezes  
10 (item 80), etc. -- as a condition of approval?

11 A. As Mr. Reed and I have explained, net savings of the transaction -- estimated to be 3-5%  
12 of non-fuel O&M over time -- will be passed on to ratepayers. Thus, ratepayers *will*  
13 benefit from the transaction, eliminating the need for the various "proxies" for such  
14 savings that have been proposed by Staff and intervenors.  
15 None of the witnesses presented any new evidence in their rebuttal testimony supporting  
16 the various "proxy" conditions. I would observe, though, that the various parties have  
17 largely abandoned any pretense of having a principled basis for demanding immediate  
18 savings. For example, Ms. Kettle's testimony makes it clear that the primary justification  
19 for her transmission escrow write-off suggestion is that "the company has offered no  
20 immediate rate relief to its customers as a result of the acquisition." (Rebuttal-PSC-  
21 Kettle-3). The reason, of course, as we have explained, is that we expect no *immediate*  
22 cost savings because this transaction is not premised on the immediate reductions in  
23 employee headcount that characterize many mergers. Similarly, lacking a more rational

1 metric, CUB witness Mr. Hahn urges the Commission to deny recovery of a portion of  
2 the transmission escrow roughly equal to the amount of transaction costs (even though  
3 shareholders are already paying for those transaction costs). (Rebuttal-CUB-Hahn-3c).  
4 Mr. Hahn explains that the “level of benefits to Wisconsin ratepayers . . . should be at  
5 least as great as the benefits to lawyers and investment bankers consummating the  
6 transaction.” (*Id.*). (As an aside, even if Mr. Hahn’s approach were justified, as noted in  
7 item 12, the amount involved is an estimated \$38 million, not the hundreds of millions of  
8 dollars suggested by Mr. Hahn, and that \$38 million cost is already being borne by  
9 shareholders.)

10 Q. With respect to items 61 and 62, Ms. Hubert claims that “WEC does not want to be  
11 bound” by its commitments that WEC Energy Group’s headquarters will be located in  
12 Wisconsin and that operational headquarters will be maintained in Milwaukee and Green  
13 Bay. (Rebuttal-PSC-Hubert-14). Do you agree?

14 A. No. While Mr. Lauber handled this topic in his rebuttal, since Ms. Hubert appears  
15 skeptical of our claims, I wanted to address it in sur-rebuttal in my capacity as President  
16 of WEC. Ms. Hubert’s speculation that we are secretly considering a move to Chicago or  
17 using the location of our headquarters as a bargaining chip is baseless. WEC is, and will  
18 remain, a Wisconsin company. Our unwillingness to accept conditions that would  
19 expand the Commission’s jurisdiction over business decisions does nothing to change  
20 this. As Mr. Lauber said in his rebuttal testimony, for any project that requires approval  
21 under the statutes, we will obviously seek approval. However, we do not see a basis for  
22 expanding the reach of the statutes in the way proposed by Ms. Hubert.

23 Q. Do you have any comments on Mr. Vock’s testimony on behalf of Jobs4WI?

1 A. Mr. Vock's rebuttal testimony did not respond to my earlier testimony in any substantive  
2 way. In arguing for modifications to Power the Future leases and high voltage tariff rates  
3 (items 5-6 and 65), Jobs4WI continues to raise concerns about the company's historical  
4 costs. The bottom line is that Jobs4WI has not identified any workable conditions that  
5 the Commission would have the authority to impose or that it has not previously rejected.

6 Q. Finally, several parties suggest that the difference between the book value of the Presque  
7 Isle Power Plant ("PIPP") and its sale price should be treated as a transaction cost for  
8 purposes of the WEC/Integrus transaction, and therefore should not be recovered from  
9 ratepayers (item 95). Do you agree?

10 A. No. First, though, I need to note that the proper ratemaking treatment of this issue -- and  
11 all other issues concerning the sale of PIPP and other Wisconsin Electric and WPS assets  
12 in the Upper Peninsula -- will be fully addressed in the § 196.80 filing that Wisconsin  
13 Electric will be making shortly in connection with that transaction. That said, it would be  
14 unjustifiably punitive to treat this "loss" in the way suggested by CUB, WIEG and Staff  
15 witness Ms. Spanjar. As Mr. Lauber noted in his supplemental direct testimony, if PIPP  
16 were being retired today because impending environmental upgrade costs would make it  
17 uneconomical to operate, there would presumably be little debate about whether  
18 Wisconsin Electric would be entitled to recover the remaining book value of the plant  
19 from ratepayers. In fact, in just the last year the Commission has allowed WPS to defer  
20 and amortize the undepreciated balances of retired plant associated with Pulliam Units 5  
21 and 6 and Weston Unit 1 (Docket No. 6690-UR-123), and has allowed Wisconsin Power  
22 & Light to do the same with the Nelson Dewey generating facility and Edgewater Unit 3  
23 (Docket No. 6680-UR-119).

1 As the Commission is well aware, we cannot simply retire PIPP today because MISO  
2 deems it essential for reliability. From Wisconsin Electric's perspective, giving up  
3 ownership of PIPP is a practical substitute for being able to retire it. There is no  
4 principled basis to distinguish these two situations.

5 Q. Does this complete your sur-rebuttal testimony?

6 A. Yes.